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HIGH COURT OF CHHATTISGARH AT BILASPUR

M. A. NO. 717 OF 2005

APPELLANT United India Insurance Company Limited.

Versus

RESPONDENT Gauri Shanker Yadav

POST FOR JUDGMENT ON 12th July, 2007

Sd/-
Dhirendra Mishra
Judge

11.7.2007

(24)

HIGH COURT OF CHHATTISGARH AT BILASPUR

M. A. NO. 717 OF 2005

APPELLANT Non-applicant	United India Insurance Company Limited, Through Branch Manager, United India Insurance Company Limited, Near Gopi Talkies, Raigarh, District Raigarh (C.G.)
Versus	
RESPONDENT Applicant	Gauri Shanker Yadav, s/o Mohit Ram Yadav, aged 49 years, Occupation Service, Resident of Kotraroad, Rajeev Nagar, Raigarh (Chhattisgarh).

Present:

Shri Pankaj Agarwal, Advocate for the appellant.

Shri Rajendra Tripathi, Advocate for respondent.

JUDGMENT

(Delivered on 12.07.2007)

Dhirendra Mishra, J

1) This appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') is directed against the award dated 22nd March, 2005 passed in Claim Case No.55/03 by the 2nd Additional Motor Accident Claims Tribunal, Raigarh, whereby a sum of Rs.25,000/- has been awarded to the respondent/claimant towards compensation for injuries sustained by him in the accident dated 17.3.2003 involving motorcycle bearing registration number CG13-B-1066 owned by respondent himself.

2) The grounds urged by the appellant-insurance company in this appeal are that the driver, owner & insurer of the offending vehicle were not arrayed as party before the claims tribunal and therefore, the claim petition ought to have been dismissed by the claims tribunal for non-joinder of necessary parties. Another ground urged by the appellant is that the respondent being the owner & insured of the vehicle and not the third party, the claim petition before the tribunal was not

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maintainable. Reliance is placed on the unreported judgment of the Division Bench of this Court dated 8.5.2007 delivered in **M.A. No. 1349 of 1997 between Beesaaha Vs. United Insurance Co. Ltd.** and judgments in the matter of **Dhanraj Vs. New India Assurance Co. Ltd. and another** reported in **(2004) 8 SCC 553** & **Oriental Insurance Co. Ltd. Vs. Smt. Jhuma Saha and others** reported in **2007 AIR SCW 859**.

3) On the other hand, learned counsel for the respondent contended that the respondent-claimant had paid the additional premium towards coverage of risk for personal accident to the owner & driver of the vehicle to the extent of Rs.1 Lac. The claims tribunal on the basis of risk coverage of the owner and driver under the policy condition, which has been admitted by Vinay Kohli, witness of the appellant himself, has allowed the claim petition and passed the impugned award fastening liability on the appellant herein. With respect to other objection it is stated that since the accident was caused by unknown vehicle, therefore, it was not possible for the claimant to make the owner, driver & insurer of the offending vehicle as party.

4) I have heard learned counsel for the respective parties and perused the material available on record.

5) It is true that the respondent himself is the owner and insured in the policy of Annexure NA-1 and liability of the insurance company is to the extent of indemnification of the insured against the respondent or a third person. In the matter of Beesaaha (supra) the Division Bench of this Court considering the fact of that case that in the insurance policy additional premium of Rs.18/- was paid to cover the risk of the driver, it was held that risk related to a salaried driver employed by the appellant/claimant and not by the appellant/owner himself.

6) In the matter of Dhanraj (supra) the Hon'ble Apex Court interpreting Section 147 of the Act held that statutory liability does not extend

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to owner of the vehicle and the insurance policy does not require an insurance company to assume risk of death or bodily injury to the owner of the vehicle. Such an insurance policy is only to indemnify the insured against liabilities incurred towards a third person or in respect of damages to property. Considering the fact of that case in Paragraph 10 it has been held that policy in question did not cover any risk for injury to the owner himself and extra premium paid under the heading of 'own damage' was, in fact, towards the passenger to the vehicle and not for the injury to the person of the owner. An owner of a vehicle can only claim provided a personal accident insurance has been taken out. Though in that case there was no such insurance.

7) In the matter of Smt. Jhuma Saha (supra) also the ratio of law laid down in the matter of Dhanraj (supra) has been quoted with approval in Paragraph 12 and it has been held that since additional premium was not paid in respect of entire risk of death or bodily injury of the owner of the vehicle, therefore, the provisions of Section 147 (b) of the Motor Vehicles Act which covers a risk of a third party only would be attracted in the facts of that case.

8) Now coming to the objection of the appellant that the claim petition was liable to be dismissed for non-joinder of necessary party. The case of the claimant before the claims tribunal was that the offending vehicle could not be identified, therefore, it was not possible for the claimant to array owner, driver and insurer of the said vehicle as party in the claim petition and the claim petition was filed only on the ground that the additional premium was paid for covering the risk of the owner & driver in the accident.

9) So far as the submission of learned counsel for the appellant that it was open to the respondent/claimant to file appropriate petition before the Consumer Forum under the terms and condition of the policy is concerned, it not the case of the appellant that the claimant has received any compensation for his personal injury from the appellant. Therefore, in the facts and circumstances of the case,

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taking into consideration that the respondent had paid an additional premium for coverage of his risk for personal accident to the extent of Rs.1 Lac and further considering that a sum of Rs.25,000/- has been awarded to the claimant, which is well within Rs.1 Lac, this Court is of the opinion that no case is made out for interference by this Court.

10) In the result, there is no illegality or infirmity in the impugned award, the appeal being devoid of substance deserves to be dismissed and the same is hereby dismissed. No order as to costs.

Sd/-
Dhirendra Mishra
Judge

Roshan/-